

CITY OF SUNNYVALE REPORT Administrative Hearing

June 28, 2006

SUBJECT: 2005-0409 - Network Appliance [Applicant/Owner]:

Application for a Vesting Tentative Map on a 45.9 acre site located at **495 Java Drive** (near Crossman Avenue) in a MP-TOD (Moffett Park Transit Oriented Development) and MP-I Moffett Park General Industrial) Zoning District. (APN: 110-

32-016, 006, 007, and 012)

Motion Phased Vesting Tentative Map to subdivide two parcels into

14 lots (creating property lines around each individual building of the approved master plan and for the creation of common area, easements, and CC&Rs for the shared use and on-going maintenance per the original Master Plan's

Major Moffett Park Design Review Permit).

REPORT IN BRIEF

Existing Site The south half of the site is currently developed with four multi-story R&D buildings and the north half of the site

has two existing industrial buildings to be demolished in the future. A large vacant area is located in the center of

Mitigated Negative Declaration for the Master Plan was

the site.

Surrounding Land Uses

North Sunnyvale Smart Station (across Caribbean Drive)

South Industrial/R&D buildings
East Industrial/R&D buildings
West Industrial/ R&D buildings

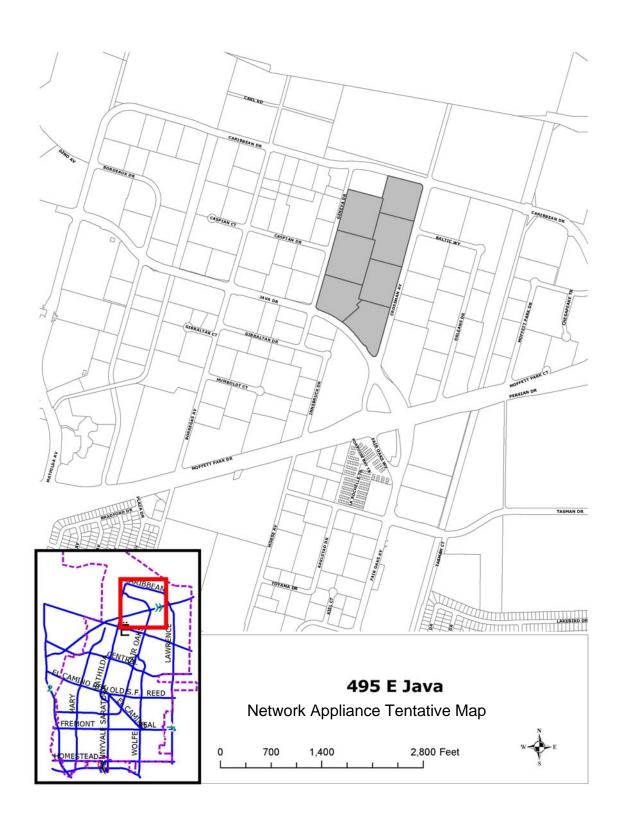
Issues On-going use and maintenance responsibilities

Status previously adopted June 27, 2005.

Staff Approve the proposed project with conditions

Recommendation

Environmental



PROJECT DATA TABLE OF APPROVED MASTER PLAN

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Moffett Park Specific Plan	Same	Moffett Park Specific Plan
Zoning District	MP-TOD and MP-I	Same	MP-TOD and MP-I
Site Area (acres)	45.89 (MP-TOD 43.215; MP-I 2.675)	Same	0.52 min.
Parcels	2	14	none
Lot Size (ac)	Lot 1: 43.215 Lot 2: 2.675	Varies on building type Common Lot 30.46	None per Major Moffett Park Design Review Permit
Master Plan Gross Floor Area (s.f.)	709,852	1,375,978 total 861,991 new 513,987 Bldgs #1-4 At full buildout 1,325,360 R&D 50,618 Amenity	- 1,375,978 max.
Lot Coverage (%)	14	34	45 max.
Floor Area Ratio (FAR)	35%	68.8%	MP-TOD 70% MP-I 50% (Site 68.8%) max.
No. of Buildings On- Site	6	13 3 Parking Garages 1 Amenity Bldg 9 R&D Bldg	
Distance Between Buildings	160	40 (230 across promenade)	32 min.
Setbacks - Master Plan			
Front	Geneva 78 Caribbean 51 Crossman 80 Java 50	Approximately 5 feet around the perimeter of each building	No internal setback, only to public street.
North (rear)	70	or cacir banding	0 min.
West (side)	0 (total 80)		Total 20 min.

ANALYSIS

Description of Proposed Project

The applicant is proposing a vesting tentative map for the purpose of creating individual lots around the footprint of each structure represented in the approved Master Plan. The applicant intends to complete the final map in phases as multiple parcel maps. Common area and easements are also included in the layout to ensure equal access and benefit to all lots that are part of the Master Plan campus area.

Background

The subject site is part of the Moffett Park Specific Plan that was adopted in the Spring of 2004. At the time the MPSP was adopted the area of the Network Appliance campus was designated with two separate zoning districts. The MPTOD area is 43.215 acres of the 45.89-acre site and the remaining 2.675 acres are a separate parcel with MP-I zoning. These two parcels were formally created as part of a parcel map approved by the Director of Public Works in 2006. In June of 2005 a Major Moffett Park Design Review Permit (2005-0340) for a campus master plan for Network Appliance Java Campus was approved. The Master Plan consists of an ultimate buildout level of 9 R&D/office buildings, 1 amenity building, and 3 parking structures. The Moffett Park Specific Plan permits subdivision of campus developments with a tentative map and does not require a Special Development Permit as would be required in other industrial areas.

Environmental Review

The subject site is located within the Moffett Park Specific Plan which was subject to certification of a Program EIR and a mitigation-monitoring program in 2003. A mitigated negative declaration was prepared for the Master Plan project in 2005. The analysis tiered from the original EIR analysis and reviewed site-specific issue not previously addressed. The proposed map is compliant with the previous analysis for the Master Plan and proposes no changes to the approved Master Plan requiring supplemental environmental review. Mitigations measures and conditions of approval from the Major Moffett Park Design Review Permit remain in force for actions relating to the tentative map or any associated improvements that are part of the final map process.

Site Layout: The campus will consist of four existing buildings and their existing on-grade parking at the south end of the site and new construction focused on the north side of the site consisting of five R&D/Office buildings, one-amenity building, and three parking structures. Public access is provided from all four public street frontages. The site design includes parking distributed across the site for mutual benefit of all buildings. A central pedestrian promenade connects through the campus from the north to the south for the mutual benefit to all buildings. The common use amenity building is also located within the central pedestrian promenade.

Tentative Map

Tentative Map Lot#	Corresponding Master Plan ID	Size (acres)
1	1	0.84
2	2	1.18
3	3	1.18
4	4	1.08
5	5	0.93
6	6	0.93
7	7	0.99
8	8	0.99
9	9	0.99
10	Garage B	1.38
11	Garage A	1.29
12	Garage C	2.68
13	Amenity Building	0.97
Lot A	Common Area	30.46

Zoning: The subject site currently consists of two legal parcels and multiple tax assessor parcels. The two legal parcels define the limits of the mixed zoning on the site of MP-I and MP-TOD. The proposed subdivision creates building footprint sized lots and common area to serve all interests. The proposed lot lines do not correspond to the current zoning district boundaries. The location of the MP-I zoning is not considered pertinent to lot line placement on this site due to the approved Master Plan's blending of densities. However, to clearly illustrate the size and corresponding FAR limits of the MP-I zoning for the overall campus, proposed lot 12 equals the size of the 2.68 acres currently zoned MP-I. Geographically this is also consistent with the intent of the MPSP to have the MP-I area assigned to the area with least direct access to transit, although it does not correspond directly with the existing MP-I zoned parcel on the site. Direct conformance is not required due to the approved Master Plan.

Phasing: The proposed tentative map is intended to be finaled in multiple phases. The first phase will consist of creating the lot lines around the existing buildings #1-4. Subsequent phases will be completed as parcel maps as complete buildout of the master plan occurs. The original Major Moffett Park Design Review Permit contemplated phased buildout of the plan and includes conditions of approval addressing the site's development in phases. The tentative map is only valid in connection with the approved Master Plan and its development requirements. As the phases are finalized they will be required to conform to the standards of the original permit rather than having the buildout of the approved design review permit conform to the proposed vesting tentative map. Meaning, when conflict exists between the tentative map and the design review permit the conditions of the design review permit will prevail.

Improvements: No initial off-site or on-site improvements are proposed with the tentative map. The conditions of approval regarding off-site improvements and

phasing will be attached to the approval of this tentative map enabling fulfillment of these obligations in conjunction with the approval of the subsequent parcel maps phases. Due to the inclusion of offsite improvements the validity of the tentative map approval may be extend to a maximum total of 7 years as permitted by Section 66452.6 of the Subdivision Map Act. Additionally phased improvements (on-site or off-site) related to utilities are required in accordance with standards practices for the Director of Public Works to approve a phased parcel map and in conjunction with the standards outlined in the original Major Moffett Park Design Review Permit.

Green Building: The Major Moffett Park Design Review Permit approval requires that the Master Plan buildout be designed to achieve a LEEDTM Certified Level of sustainability. This requirement is to be implemented on a building-by-building basis as they are constructed. The subdivision of the campus into multiple parcels with potential for different ownership does not relieve the site from the green building obligations of the original approval. Conditions are included with this report requiring recorded documents and provisions within CC&Rs addressing ongoing green building requirements for existing and future development.

Easements: There is a major storm sewer line that runs east west through the middle of the proposed site. Due to the location of Garage B the portion of the line in its footprint will need to be relocated and rebuilt with a public easement granted over the new line. This requirement was recognized in the original approval.

New easements are proposed as part of tentative map to ensure rights of access, use of parking, stormwater management, and for utilities throughout the site. Conditions of approval require the provision of easements to guarantee rights of use to all parcels within the tentative map subject area as would have occurred as single campus development. This means the CC&Rs and subsequent parcel maps shall include language outlining rights and obligations for the common area improvements. Conditions of approval for the tentative map require that prior to the approval of the first phase or parcel map the CC&Rs are to be submitted for review and subject to the approval of the City and are to be approved prior to the approval of the first phase or parcel map by the Director of Public Works.

Parking: Although individual lots are proposed around the parking garages, these lots are to be available for general use of all facilities within the subject area of the tentative map. The original master plan was approved based on a parking ratio applied to the site as a whole and did not distribute or assign specific parking to individual buildings. Conditions of approval require that easement language of the final map or parcel maps include provisions allowing for access to and full rights of usage to parking lots and parking structures whether they are located in the common area or as part of a separate lot on the tentative map.

Compliance with Development Standards/Guidelines: The proposed property lines do not meet the underlying zoning standards for building setbacks or lot size. However, the MPSP permits subdivision of property that does not meet minimum standards provided that it is part of a campus and for the purpose of creating ownership opportunities for individual buildings of an overall campus. With the parking garages proposed as individual lots they would be consider non-compliant with the zoning standards requirements for parking to be on site for a use. In this case conditions are put in place to ensure those space are available for all users in the campus. The primary concern with subdiving a campus is ensuring that if individual buildings were occupied by separate owners that the common improvements would remain functional and beneficial to all parties. In this case the conditions of approval required submittal of CC&Rs addressing the relationships of the individual buildings to the required common area improvements of the original master plan approval, e.g. parking, stormwater, circulation, landscaping, amenity building, etc. Specifically the parking garages will need to be available for all users in the campus since the project was not design around equal parking distribution per the zoning code requirements. In addition, the green building requirements of the original master plan are required to be recorded against all properties on the campus master plan area to ensure all future constructions meets the design requirements of the original approval.

Fiscal Impact

The tentative map does not result in any direct fiscal impacts beyond normal fees and permitting requirements.

Public Contact

No comments have been received from the public regarding the proposed project.

Notice of Negative Declaration and Public Hearing	Staff Report	Agenda
 Published in the <i>Sun</i> newspaper 18 notices mailed to the property owners and residents within 300 ft. of the project site 	 Posted on the City of Sunnyvale's Website Provided at the Reference Section of the City of Sunnyvale's Public Library 	 Posted on the City's official notice bulletin board City of Sunnyvale's Website

Conclusion

Findings: Staff was able to make the required Finding to support the approval of the tentative map per the conditions of approval.

Conditions of Approval: Conditions of Approval are located in Attachment B.

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Alternatives

- Approve the Tentative Map with attached conditions.
- 2. Approve the Tentative Map with modified conditions.
- Deny the Tentative Map request. 3.
- Do not take action on the request and direct staff as where additional

environmental review is required.
Recommendation
Recommend Alternative 1
Prepared by:
Kelly Diekmann Project Planner
Reviewed by:
Trudi Ryan Planning Officer
Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Tentative Map

Recommended Findings - Tentative Map

In order to approve the Tentative Map, the proposed subdivision must be consistent with the general plan. Staff finds that the Tentative Map is in conformance with the General Plan. However, if any of the following findings can be made, the Tentative Map shall be denied. Staff was <u>not</u> able to make any of the following findings and recommends approval of the Tentative Map.

- 1. That the subdivision is not consistent with the General Plan.
- 2. That the design or improvement of the proposed subdivision is not consistent with the General Plan.
- 3. That the site is not physically suitable for the proposed type of development.
- 4. That the site is not physically suitable for the proposed density of development.
- 5. That the design of the subdivision or proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
- 6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
- 7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.
- 8. That the map fails to meet or perform one or more requirements or conditions imposed by the "Subdivision Map Act" or by the Municipal Code

The project is in conjunction with an approved Major Moffett Park Development Permit (2005-0340) that allows for the development of a Network Appliance Campus Master Plan. The proposed tentative map proposes to create lot lines around the footprint of the approved buildings in the Master Plan. The tentative map does not change the redevelopment potential of site but instead accommodates the future buildout of the approved campus master plan and does not change or detract from the approved design features of the original Master Plan permit approval.

Recommended Conditions of Approval Tentative Map-

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit and the conditions of approval acknowledged by reference here in for permit #2005-0340:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. Project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development without a public hearing, major changes may be approved by the a public hearing.
- B. The Conditions of Approval shall be reproduced on the front page of the plans submitted for a building permit and public works permits.
- C. The Vesting Tentative Map Application is only valid in conjunction with the designs and improvements approved as part of the original Master Plan Major Moffett Park Design Review Permit.
- D. The Vesting Tentative Map is may be completed in phases filed as individual parcel maps. The original tentative map approval is vlaid for a period of 2 years. Subsequent extensions may be approved per requirements of the Title 18 and the Subdivision Map Act.
- E. The Final Map or individual Parcel Maps shall not be approved by the Director of Public Works without acceptance by the Building Official that the lot lines and building construction types do not conflict
- F. All conditions of approval of the original permit 2005-0340 in respect to phasing requirements are hereby incorporated as requirements for the completion of phases of the tentative map.
- G. Prior to approval of the final map or a parcel map for a lot that does not have an approved building permit issued, site or corresponding off-site improvements may be required to be completed or security posted.
- H. Specifically off-site improvement obligations, including but not limited to the Crossman/Caribbean intersection improvements, are attached as a condition of approval to the final map or parcel maps of the vesting tentative map.

2. COMPLY WITH OR OBTAIN OTHER PERMITS

A. Obtain necessary permits from the Department of Public Works for all proposed off-site improvements.

3. CC&R's (CONDITIONS, COVENANTS AND RESTRICTIONS)

- A. CC&R's are required to the on-going use and maintenance of the common interests of the subject site. The CC&Rs shall be submitted to the City prior to the approval of any final maps or parcel maps for the vesting tentative map.
- B. Any proposed deeds, covenants, restrictions and by-laws relating to the tentative map are subject to review and approval by the Director of Community Development and the City Attorney.
- C. Specific provisions that are to be addressed to the satisfaction of the City include all improvements and operational conditions of the master plan approval related to the relationship and benefit of each individual parcel to the general amenities and improvements of the campus, including but not limited to the following:
 - 1. Stormwater Management Plan maintenance and reporting
 - 2. Amenity Building
 - 3. Landscape Maintenance
 - 4. Green Building and Sustainable Design Features.
 - 5. Ingress and Egress
 - 6. Availability of Parking
 - 7. Participation in and reporting of Transportation Demand Management Programs.
 - 8. Artwork
 - 9. Utilities
 - 10. Solid Waste Collection
- D. The CC&Rs shall contain the following language:
 - a. "Right to Remedy Failure to Maintain Common Area. In the event that there is a failure to maintain the Common Area so that owners, lessees, and their guests suffer, or will suffer, substantial diminution in the enjoyment, use, or property value of their Project, thereby impairing the health, safety and welfare of the residents in the Project, the City, by and through its duly authorized officers and employees, will have the right to enter upon the subject Property, and to commence and complete such work as is necessary to maintain said Common Area. The City will enter and repair only if, after giving the Association and Owners written notice of the failure to maintain the Common Area, they do not commence correction of such conditions in no more than thirty (30) days from the giving of the notice and proceed diligently to completion. All expenses incurred by the City shall be paid within thirty (30) days of written demand. Upon a failure to pay within said thirty (30)

- days, the City will have the right to impose a lien for the proportionate share of such costs against each Lot in the Project.
- b. It is understood that by the provisions hereof, the City is not required to take any affirmative action, and any action undertaken by the City will be that which, in its sole discretion, it deems reasonable to protect the public health, safety and general welfare, and to enforce it and the regulations and ordinances and other laws.
- c. It is understood that action or inaction by the City, under the provisions hereof, will not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of these restrictions or any of the rules, regulations and ordinances of the City, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.
- d. It is further understood that the remedies available to the City by the provision of this section or by reason of any other provisions of law will be cumulative and not exclusive of the maintenance of any other remedy. In this connection, it is understood and agreed that the failure to maintain the Common Area will be deemed to be a public nuisance and the City will have the right to abate said condition, assess the costs thereof, and cause the collection of said assessments to be made on the tax roll in the manner provided by appropriate provisions of the Sunnyvale Municipal Code or any other applicable law.
- e. No Waiver. No failure of the City of Sunnyvale to enforce any of the covenants or restrictions contained herein will in any event render them ineffective.
- f. Third-Party Beneficiary. The rights of the City of Sunnyvale pursuant to this Article will be the rights of an intended third party beneficiary of a contract, as provided in Section 1559 of the California Civil Code, except that there will be no right of Declarant, the Association, or any Owner(s) to rescind the contract involved so as to defeat such rights of the City of Sunnyvale.
- g. Hold Harmless. Declarant, Owners, and each successor in interest of Declarant and said Owners, hereby agree to save, defend and hold the City of Sunnyvale harmless from any and all liability for inverse condemnation which may result from, or be based upon, City's approval of the Development of the subject Property."

4. EASEMENTS AND DEDICATIONS

- A. Dedicate easement for reconstructed storm sewer line near Parking Structure B.
- B. Provide easements and descriptions of use for public utilities, ingress and egress, parking, and emergency vehicle access.
- C. Certified Stormwater plans must be recorded with the property deed. The owner is responsible for maintaining the stormwater BMPs.

5. TENTATIVE MAPP PUBLIC WORKS DEPARTMENT CONDITIONS

- A. Full development fees shall be paid for each parcel or lot shown on final map or parcel map and the fees shall be calculated in accordance with City Resolutions current at the time of payment.
- B. Comply with all applicable code requirements as noted in the Standard Development Requirements.
- C. Public Facility and Frontage improvements shall be required to be implemented per the standards of the master plan approval permit 2005-0340.
- D. At the time of submittal for a final map or a parcel map, submit an up to date title report.
- E. At the time of submittal for a final map or a parcel map phase, submit a utility plan and grading/drainage plan for the entire campus area. The plans should show and identify all existing and proposed sewer, storm drain and water mains and laterals serve or will serve the each parcel, including service lines on Java, Crossman, Caribbean and Geneva. The plans should also show existing and proposed demolition and construction of public improvements (driveways, curb, gutter and sidewalks, water meters for domestic and irrigation with backflow device, overhead utilities, etc.) Any existing deficient public improvements shall be upgraded to current City standards.

